

### **REMARKS/ARGUMENTS**

The Examiner is thanked for their review of the application.

Claims 1-2 and 7-10 remain in this application. Claim 1 has been amended. Claims 3 and 4 have been canceled. No new matter has been added.

In the Office Action dated May 16, 2006, the Examiner has rejected Claims 1-4, 7-10 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 1, the Examiner has stated that “Claim 1 recites, ‘generating the... preferred set of prices using the local optimum as a starting point.’ It is unclear, in the context of the claimed invention what the term ‘using the local optimum as a starting point’ means. It is unclear how the starting point is relevant to the determination of the preferred set of prices. It appears that one or more process steps are missing which would fully incorporate this feature in the processing of generating the preferred set of prices. It appears that one or more process steps are missing which would fully incorporate this feature in the process of generating the preferred set of prices. Claim 1 is also indefinite because the ‘generating..a local optimum..’ step refers to the term ‘the cost data’ without distinctly specifying which (or both) cost data are being applied in the step. However, the claim refers to two instances of the cost data, one the cost data received in the receiving step and the cost data as inputted in the inputting step. The claim should clearly specify that both types of cost data are used in the generation of the local optimum.”

Claim 1 has now been amended to read, in pertinent part:

“receiving, using the computer system, a plurality of demand coefficients;  
receiving, using the computer system, known cost data including activity-based costs;

imputing, using the computer system, missing or incomplete cost data to give imputed cost data;

combining using the computer system, said known cost data with said imputed cost data to give a combined cost data set;

generating, using the computer system, a sales model from the plurality of demand coefficients;

generating, using the computer system, a cost model from the combined cost data set, and wherein the activity-based costs include variable costs and fixed costs, further wherein said cost model determines a total cost for each product in a given demand group in a given store for a given time period by computing a cost for each selected costing activity;

receiving, using the computer system, a set of actual prices;

initializing, using the computer system, a set of incumbent prices to the set of actual prices;

generating a local optimum by applying, using the computer system, the set of incumbent prices to the sales model and the cost model wherein the local optimum for the preferred set of prices maximizes profit; and

generating the preferred set of prices by applying, using the computer system, the local optimum prices to the sales model and the cost model in an iterative manner until the preferred set of prices is reached.” (emphasis added).

Support for the amendment may be found in the specification as filed on page 115, lines 6 – 15. As amended, Claim 1 more distinctly claims the method of using a local optimum to determine a final preferred set of prices. Also, the disparate sets of “cost data” have been designated as “known cost data” and “imputed cost data.” Said data sets are combined in a “combined cost data set” to be used in generating the cost model.

Regarding Claim 3, the Examiner has stated that “The amended claim 3 recites limitation ‘generating the preferred set of prices using the profit model. However, this limitation conflicts with the independent claim 1 which recites ‘generating the... preferred set of prices using the local optimum as a starting point.’ Therefore, it appears that claims 1 and 3 recite disparate methods of

generating the preferred set of prices, since claim 3 fails to further limit any aspects of ‘generating ..the preferred set of prices using the local optimum as a starting point’ of claim 1.”

Regarding Claim 4, the Examiner has stated that “Claim 4 depends at least upon both claims 3 and 2. Claim 4 further limits ‘the generation of the preferred set of prices’. Note that there are two instances of the process steps ‘generating ..the preferred set of prices’, one in each of claims 1 and 3. It is unclear which of these two generating claim 4 further limits.”

Both Claim 3 and Claim 4 have been canceled without prejudice or disclaimer of the subject matter therein.

Regarding Claim 8, the Examiner has stated that “Claim 8 which depends upon claim 4 refers to ‘the preferred set of prices’. This renders the claim indefinite because there are two instances of the ‘preferred set of prices’ as discussed above.”

As discussed above, Claim 4 has been canceled. As such, the antecedent basis of “the preferred set of prices” has been made definite.

In sum, base claim 1 has been amended and is now believed to be allowable. Claims 3 and 4 have been canceled without prejudice or disclaimer of the subject matter therein. Dependent claims 2, and 7 - 10 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent claims for at least the same reasons. Hence, Examiner's rejection of dependent Claims 2, and 7 - 10 are rendered moot in view of the amendment to independent Claim 1. Applicants believe that all pending claims 1, 2, and 7 - 10 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. The commissioner is authorized to charge the amount of \$790.00 to cover the RCE fee and \$120 to cover the one month extension of time fee and any additional fees that may be due to our Deposit Account No. 50-2766 (Order No. DEM1P005). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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